Supreme Court, U.S.
FILED
MAR 15 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-1298

MOTION FILED
MAR 15 1990

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

INGERSOLL-RAND COMPANY,
Petitioner,

v.

PERRY MCCLENDON,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Texas

---

MOTION TO FILE BRIEF AS AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL IN SUPPORT OF PETITIONER

ROBERT E. WILLIAMS
DOUGLAS S. MCDOWELL
ANN ELIZABETH REESMAN *
MCGUINESS & WILLIAMS
1015 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005
(202) 789-8600

Attorneys for Amicus Curiae Equal Employment Advisory Council

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

No. 89-1298

INGERSOLL-RAND COMPANY,
Petitioner,

v.

PERRY MCCLENDON,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Texas

---

MOTION OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF PETITIONER

To the Honorable, the Chief Justice and the Associate Justices of the United States Supreme Court:

Pursuant to Rule 37 of the Rules of this Court, the Equal Employment Advisory Council ("EEAC") respectfully moves this Court for leave to file the accompanying brief amicus curiae in support of Petitioner in this case. Respondent Perry McClendon has refused consent. In support of this motion, EEAC by the following shows that this brief brings relevant matter to the attention of

the Court that has not already been brought to its attention by the parties.

1. EEAC is a nationwide association of employers and trade associations organized in 1976 to promote sound approaches to the elimination of discriminatory employment practices. Its membership comprises a broad segment of the business community. The Council's governing body is a Board of Directors composed of experts in the field of equal employment opportunity. Their combined experience gives the Council an unmatched depth of knowledge of the practical as well as the legal aspects of equal employment policies and requirements. The members of EEAC are firmly committed to the principles of nondiscrimination and equal employment opportunity.

2. All of EEAC's members, and the constituents of its trade association members, are employers subject to various employment and labor laws, including the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq.* As employers, virtually all of EEAC's members and member constituencies maintain employee benefit plans for their employees over and above normal wages and salaries. Many of these plans are products of collective bargaining with employee representatives.

3. EEAC members conduct business in virtually all states, and many members themselves have operations in a multitude of states. As potential defendants to state tort suits charging discriminatory interference with rights under employee benefit plans, EEAC's members are interested in the extent to which ERISA pre-empts such claims.

4. Thus, the issues presented for review in this case are extremely important to the nationwide constituency which EEAC represents. The court below held that a tort action under state law charging discriminatory discharge with the intent to interfere with pension rights, which is specifically prohibited by § 510 of ERISA, was not precluded by ERISA's broad pre-emption provision because the plaintiff sought lost wages, damages for mental anguish, and punitive damages, not lost pension benefits.

This conclusion conflicts with numerous decisions of the Circuit Courts of Appeals and various state supreme courts, and contravenes the clear language of ERISA as well as numerous decisions of this Court, supported by a wealth of legislative history, all of which strongly favor broad pre-emption of state tort suits related to employee benefit plans.

Moreover, the decision of the Supreme Court of Texas undermines the uniformity of pension law which Congress sought to establish in enacting ERISA. Accordingly, the decision below significantly burdens the administration of employee benefit plans covered by ERISA, and subjects employers to varying provisions of state law, with the attendant inconsistencies in rules and policies, and exposes employers to tort damages not available under ERISA.

5. EEAC has participated as amicus curiae in several cases involving ERISA pre-emption of state law, including several in this Court.[1] In addition, EEAC has filed amicus curiae briefs with this Court in a number of other cases involving pre-emption of State suits by federal law.[2]

EEAC's interest in this case lies in its desire that the Congressional purpose in enacting ERISA, to "establish

---

[1] *General Motors Corporation v. Wells*, No. 89-1067 (*petition for cert. filed* December 27, 1989); *Shaw v. Delta Airlines*, 463 U.S. 85 (1983); *Nolan v. Otis Elevator Co.*, 505 A.2d 580 (N.J. 1986); *Brooklyn Union Gas Co. and American Airlines v. N.Y. Human Rights Appeal Board*, 359 N.E.2d 393 (N.Y. 1976).

[2] *General Motors Corporation v. Wells*, *supra* n.1 (NLRA and § 301 LMRA pre-emption), *Caterpillar, Inc. v. Williams*, 107 S. Ct. 2425 (1987) (§ 301 pre-emption); *Lingle v. Norge Division of Magic Chef, Inc.*, 108 S. Ct. 1877 (1988) (§ 301 pre-emption).

pension plan regulation as an exclusively federal concern," *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981), not be undermined by an unduly narrow interpretation of the ERISA pre-emption provision. Such an interpretation would allow persons in states that permit widely varied employment-related individual tort causes of action to resort to the state courts and state law to resolve disputes more properly addressed through application of uniform federal law. The decision of the Supreme Court of Texas below, which adopts a severely restrictive interpretation of ERISA pre-emption and allows a state tort suit on a cause of action specifically provided by ERISA, creates substantial concern among the employer community regarding the scope of ERISA pre-emption in these cases.

Because of its significant experience, EEAC is uniquely situated to brief the Court on the relevant concerns of the business community and the significance of this case to employers generally, as opposed to its significance to the immediate parties.

WHEREFORE, it is respectfully moved that EEAC be granted leave to file the accompanying brief amicus curiae in this case.

Respectfully submitted,

ROBERT E. WILLIAMS
DOUGLAS S. MCDOWELL
ANN ELIZABETH REESMAN *
MCGUINESS & WILLIAMS
1015 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005
(202) 789-8600
Attorneys for Amicus Curiae Equal Employment Advisory Council

* Counsel of Record

March 15, 1990

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTEREST OF THE AMICUS CURIAE	2
STATEMENT OF THE CASE	2
SUMMARY OF REASONS FOR GRANTING THE WRIT	3
REASONS FOR GRANTING THE WRIT	5
I. THE TEXAS SUPREME COURT'S HOLDING THAT ERISA DOES NOT PRE-EMPT STATE TORT SUITS FOR INTERFERENCE WITH EMPLOYEE BENEFITS IS IN DIRECT CONFLICT WITH DECISIONS OF THE FEDERAL COURTS AND ANOTHER STATE SUPREME COURT, AND INCORRECTLY INTERPRETS ERISA PRE-EMPTION	5
A. The Decision Below Directly Conflicts with Numerous Decisions of Federal and State Courts Holding That ERISA's Broad Pre-emption Provision Precludes State Tort Suits Related to Employee Benefit Plans	5
1. The Decision Below Conflicts with Those of Other Courts Holding That State Tort Suits for Interference with Pension Benefits Are Pre-empted by ERISA	5
2. The Decision Below Likewise Conflicts with Decisions Holding That Suits Claiming Interference with Other Employee Benefits Are Pre-empted	8
3. The Decision Below Conflicts with This Court's Ruling in *Pilot Life* That State Claims within The Scope of ERISA Are Pre-empted	9

TABLE OF CONTENTS—Continued

	Page
B. The Decision Below Incorrectly Interprets ERISA, Which Broadly Pre-empts State Tort Actions	10
1. The Statutory Language, The Legislative History, and This Court's Interpretations Mandate Pre-emption of State Tort Actions That Mirror § 510 of ERISA	10
2. The Decision Below Incorrectly Distinguishes Suits for Damages, as Opposed to Suits for Benefits, as Being Exempt from ERISA Pre-emption	13
II. THE DECISION BELOW, BY ALLOWING A STATE TORT SUIT IN A CLAIM GOVERNED BY ERISA, UNDERMINES THE CONSISTENT SYSTEM OF PENSION REGULATION ESTABLISHED BY CONGRESS IN ERISA AND SERIOUSLY BURDENS THE VAST NUMBER OF EMPLOYERS WHO MAINTAIN EMPLOYEE BENEFIT PLANS	15
A. The Decision Below Seriously Undermines The Uniform System of Pension Regulation Congress Intended To Establish with ERISA	15
B. The Decision Below, by Allowing a State Tort Action That Mirrors ERISA § 510, Seriously Burdens Employers Who Maintain Employee Benefit Plans	16
CONCLUSION	18

TABLE OF AUTHORITIES

CASES	Page
Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504 (1981)	9, 11, 12, 14
Conaway v. Eastern Associated Coal Corporation, 358 S.E.2d 423 (W. Va. 1986)	7
Corum v. Farm Credit Services, 628 F. Supp. 707 (D. Minn. 1986)	8
Cox v. Keystone Carbon Co., 861 F.2d 390 (3d Cir. 1988)	6
Dependahl v. Falstaff Brewing Corporation, 653 F.2d 1208 (8th Cir. 1981)	9
Dister v. The Continental Group, Inc., 859 F.2d 1108 (2d Cir. 1988)	6
Fitzgerald v. Codex Corp., 882 F.2d 586 (1st Cir. 1989)	8, 9
Folz v. Marriott Corporation, 594 F. Supp. 1007 (W.D. Mo. 1984)	9
Gavalik v. Continental Can Company, 812 F.2d 834 (3d Cir.), *cert. denied*, 484 U.S. 979 (1987)	6
Gordon v. Matthew Bender & Company, Inc., 562 F. Supp. 1286 (N.D. Ill. 1983)	8
Harvey v. I.T.W., Inc., 672 F. Supp. 973 (W.D. Ky. 1987)	7
Hovey v. Lutheran Medical Center, 516 F. Supp. 554 (E.D.N.Y. 1981)	13
K Mart Corp. v. Ponsock, 732 P.2d 1364 (Nev. 1987)	13
Kelly v. International Business Machines Corporation, 573 F. Supp. 366 (E.D. Pa. 1983), *aff'd without opinion*, 746 F.2d 1467 (3d Cir. 1984)	8
King v. James River-Pepperell, Inc., 593 F. Supp. 1344 (D. Mass. 1984)	8
Mackey v. Lanier Collections Agency & Service, Inc., 108 S.Ct. 2182 (1988)	10, 15
Metropolitan Life Insurance Co. v. Massachusetts, 471 U.S. 724 (1985)	12, 15
Metropolitan Life Insurance Company v. Taylor, 107 S. Ct. 1542 (1987)	12, 13

TABLE OF AUTHORITIES—Continued

	Page
Miner v. International Typographical Union Negotiated Pension Plan, 601 F. Supp. 1390 (D. Colo. 1985)	8
Pilot Life Insurance Company v. Dedeaux, 107 S. Ct. 1549 (1987)	*passim*
Pratt v. Delta Air Lines, Inc., 675 F. Supp. 991 (D. Md. 1987)	7, 8, 14
Savodnik v. Korvettes, Inc., 488 F. Supp. 822 (E.D. N.Y. 1980)	13
Shaw v. Delta Air Lines, Inc., 463 U.S. 84 (1983)	6, 11, 12, 16
Sorosky v. Burroughs Corporation, 826 F.2d 794 (9th Cir. 1987)	7
Treadwell v. John Hancock Mutual Life Insurance Company, 666 F. Supp. 278 (D. Mass. 1987)	8
STATUTES	
Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq.*	3, 5
Section 502, 29 U.S.C. § 1132	13, 16
Section 510, 29 U.S.C. § 1140	3, 6, 10, 13
Section 514, 29 U.S.C. § 1144	3, 6, 10, 13, 14
LEGISLATIVE HISTORY	
120 Cong. Rec. 29197 (1974)	11
120 Cong. Rec. 29933 (1974)	11, 17
120 Cong. Rec. 29942 (1974)	15
MISCELLANEOUS	
Employee Benefit Research Institute, Questions and Answers About Employee Benefits, EBRI Issue Brief No. 89 (April 1989)	17

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

No. 89-1298

INGERSOLL-RAND COMPANY,
Petitioner,

v.

PERRY MCCLENDON,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Texas

---

BRIEF AMICUS CURIAE OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL IN SUPPORT OF PETITIONER

The Equal Employment Advisory Council ("EEAC") respectfully submits this brief amicus curiae contingent on the granting of the accompanying motion for leave.[1] The brief supports the petition for a writ of certiorari filed in this case by Ingersoll-Rand Company, and urges reversal of the decision below.

---

[1] A letter of consent on behalf of the petitioner has been filed with the Clerk of the Court.

INTEREST OF THE AMICUS CURIAE

The interest of the amicus curiae is fully set forth in the accompanying motion.

STATEMENT OF THE CASE

Respondent Perry McClendon, who had been employed by Petitioner Ingersoll-Rand since August 1972, was discharged in November 1982 as part of a reduction in force. Pet. App. 1a-2a.[2] At the time, McClendon believed that he needed four more months of service to qualify for a pension benefit, *id.* at 2a, but in fact his pension was vested. *Id.* at n.2.

McClendon brought a state tort suit against Ingersoll-Rand, claiming *inter alia* that Ingersoll-Rand had discharged him in order to avoid making contributions to his pension fund. Pet. App. 1a.[3] The trial court granted summary judgment for the employer, and the Texas Court of Appeals affirmed. *Id.* The Court of Appeals recognized that McClendon "incorrectly concluded that being discharged before ten years of service would prevent him from collecting certain benefits" and that "[h]e was in fact never denied those benefits." Pet. App. 24a. Thus, the Court of Appeals held, "Ingersoll-Rand did nothing more than react to an economic downturn by reducing its sales force. Such conduct is in no way actionable." *Id.*

The Supreme Court of Texas reversed. Finding a state public policy interest in protecting employee pension rights, the court created an exception to the employment-at-will doctrine in Texas, allowing a cause of action where an employee proves that he was discharged to avoid payment of pension benefits. Pet. App. 5a.

[2] Citations to the Petitioner's Appendix are designated as Pet. App. ——.

[3] McClendon also alleged causes of action based on an alleged employment contract, an implied covenant of good faith and fair dealing, and intentional infliction of emotional distress. Pet. App. 17a.

The court's public policy finding was based in part on the existence of § 510 of the Employee Retirement Income Security Act, 29 U.S.C. § 1140, which prohibits discrimination against employees for the purpose of interference with their pension rights. Pet. App. 5a. While recognizing that such cases have been held to be preempted by ERISA, the court asserted that this case was distinguishable because McClendon sought tort damages, not pension benefits. *Id.* at n.3.

Justice Cook filed a strong dissent in which Chief Justice Phillips and Justice Hecht joined. Pet. App. 6a-13a. Agreeing with the majority that "ERISA demonstrates the great significance attached to income security for retirement," Justice Cook went on to recognize that § 510 is *so* significant that it "confers upon employees a federal version of the cause of action created by this court, confines litigation of the federal cause of action to the federal courts, and preempts the state cause of action." Pet. App. 6a.

Justice Gonzalez, who also dissented, joined Justice Cook's conclusion that ERISA pre-empts McClendon's cause of action. *Id.* at 13a. He also observed that the majority's reliance on two decisions of the U.S. District Court for the Eastern District of New York was "misplaced," since both the Northern District of New York and a New York court of appeals had refused to follow them. *Id.* at 15a.

SUMMARY OF REASONS FOR GRANTING THE WRIT

Section 514 of the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.*, broadly pre-empts state laws, including common law developed through court decision, which relate to employee benefit plans. Section 510 prohibits discrimination against employees for the purpose of interfering with the attainment of

rights under an employee benefit plan, and provides a civil cause of action to an employee who is the victim of such discrimination. Notwithstanding ERISA's broad pre-emption provision and its provision of a cause of action for interference with employee benefits, the Supreme Court of Texas held that an action could be maintained in state court under state law for a claim that mirrors § 510.

The decision below conflicts directly with numerous federal and state court decisions holding that ERISA pre-empts state causes of action. Indeed, it also conflicts with this Court's decision in *Pilot Life Insurance Company v. Dedeaux*, 107 S. Ct. 1549 (1987), which conclusively established ERISA pre-emption of state common law tort and contract claims regarding improper processing of benefit plans, and which applies by analogy to the decision below.

Moreover, the Texas Supreme Court's decision is incorrect under the clear statutory language of ERISA, as supported by the legislative history and applied by this Court. The court below reasoned that ERISA pre-emption was inapplicable because the plaintiff sought tort damages rather than pension benefits. Since Congress specifically chose to supersede state causes of action as well as any state remedies that might be available, with an exclusively federal remedy, a claim for state tort damages cannot overcome ERISA's complete pre-emption of state laws that "relate to" employee benefit plans.

The decision of the Supreme Court of Texas seriously erodes the uniform federal system of employee benefit regulation that Congress sought to establish in enacting ERISA. Moreover, the holding below seriously burdens the numerous employers who voluntarily maintain employee benefit plans, many of which operate in more than one state. The Texas Supreme Court's decision would allow the application of both federal and state requirements to employee benefit plans, causing substantial confusion.

In addition, exposure to diverse state and local laws and regulations will hinder the maintenance of uniform benefit plans by multistate employers, requiring them to choose between administering costly individual plans in each state and eliminating benefits that conflict with the requirements of a partcular jurisdiction. These concerns formed the basis for ERISA's intentionally broad pre-emption provision, and have influenced this Court in numerous decisions recognizing the exclusively federal nature of claims related to benefit plans. For these reasons, it is crucial that this Court grant the petition to counteract the damage done by the decision below to employee benefit plans.

REASONS FOR GRANTING THE WRIT

I. THE TEXAS SUPREME COURT'S HOLDING THAT ERISA DOES NOT PRE-EMPT STATE TORT SUITS FOR INTERFERENCE WITH EMPLOYEE BENEFITS IS IN DIRECT CONFLICT WITH DECISIONS OF THE FEDERAL COURTS AND ANOTHER STATE SUPREME COURT, AND INCORRECTLY INTERPRETS ERISA PRE-EMPTION

A. The Decision Below Directly Conflicts with Numerous Decisions of Federal and State Courts Holding That ERISA's Broad Pre-emption Provision Precludes State Tort Suits Related to Employee Benefit Plans

1. *The Decision Below Conflicts with Those of Other Courts Holding That State Tort Suits for Interference with Pension Benefits Are Pre-empted by ERISA*

The Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq.*, is a "comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." *Shaw*

v. Delta Air Lines, Inc., 463 U.S. 84, 90 (1983). Section 510 of ERISA provides in pertinent part:

> It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary . . . for the purpose of interfering with the attainment of any right to which such participant may become entitled under [an employee benefit] plan . . . The provisions of Section 1132 of this title [relating to civil enforcement] shall be applicable in the enforcement of this section.

29 U.S.C. § 1140. Thus, § 510 prohibits an employer from discharging an employee in order to avoid payment of benefits, and creates a civil cause of action in favor of such employee. *See, e.g., Cox v. Keystone Carbon Co.*, 861 F.2d 390, 391-2 (3d Cir. 1988) (§ 510 prevents employers from discharging employees to keep them from obtaining plan benefits, and authorizes a civil action).[4]

ERISA contains broad language pre-empting state action relating to employee benefit plans:

> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title.

Section 514, 29 U.S.C. § 1144(a).[5]

---

[4] *See also Dister v. The Continental Group, Inc.*, 859 F.2d 1108 (2d Cir. 1988); *Gavalik v. Continental Can Company*, 812 F.2d 834 (3d Cir.), *cert. denied*, 484 U.S. 979 (1987) (burden of proof in a civil action under § 510).

[5] Subsection (b) generally excepts (1) causes of action occurring before January 1, 1975; (2) state laws regulating insurance, banking and securities; (3) use of the services or facilities of a State; (4) state criminal laws; (5) the Hawaii Prepaid Health Care Act; (6) certain state laws regulating some multiple employer welfare arrangements; and (7) qualified domestic relations orders, none of which are relevant here.

In direct contrast to the decision below, several courts have held that ERISA pre-empts a state tort suit in which an employer is alleged to have discharged a worker to avoid paying benefits. In *Sorosky v. Burroughs Corporation*, 826 F.2d 794 (9th Cir. 1987), an employee claimed wrongful discharge on a number of theories, including an allegation that his employer discharged him in an attempt to avoid paying him monthly retirement benefits. 826 F.2d at 800. The Ninth Circuit ruled that ERISA pre-empted the wrongful discharge claim "to the extent that. . . [it] refers to the employee benefit plan." *Id.* Likewise, the Supreme Court of Appeals of West Virginia, the highest court in that state, has upheld a grant of summary judgment in favor of an employer based on ERISA pre-emption when an employee claimed that he was discharged to prevent vesting of his pension rights. *Conaway v. Eastern Associated Coal Corporation*, 358 S.E.2d 423 (W. Va. 1986).

In addition, numerous federal district courts have reached the same conclusion, and have rejected state tort claims fitting the description in ERISA § 510. In *Harvey v. I.T.W. Inc.*, 672 F. Supp. 973 (W.D. Ky. 1987), a former employee based his claim of discharge in violation of public policy on the policy expressed in § 510, as did the Texas Supreme Court below. The court granted summary judgment on the grounds of ERISA pre-emption.

In a similar case, the U.S. District Court for the District of Maryland held that ERISA pre-empted a plaintiff's claim for damages for emotional distress, mental anguish and punitive damages allegedly resulting from an employer's intentional discharge to prevent her retirement benefits from vesting. *Pratt v. Delta Air Lines, Inc.*, 675 F. Supp. 991 (D. Md. 1987). The court specific-

ally rejected the plaintiff's argument, like that adopted by the court below, that the suit was not pre-empted because it involved a claim for damages other than retirement benefits. 675 F. Supp. at 998-99.[6]

2. *The Decision Below Likewise Conflicts with Decisions Holding That Suits Claiming Interference with Other Employee Benefits Are Pre-empted*

In harmony with the numerous decisions holding that state suits alleging discharge to interfere with pension benefits are pre-empted by ERISA, several courts have held that similar suits concerning interference with other benefits are pre-empted as well. In *Fitzgerald v. Codex Corp.*, 882 F.2d 586 (1st Cir. 1989), the First Circuit concluded that a claim that an employee was discharged to avoid having to pay health benefits for his wife was pre-empted by ERISA since the claim "related to" an employee benefit plan and § 510 creates a cause of action

---

[6] *See also Treadwell v. John Hancock Mutual Life Insurance Company*, 666 F. Supp. 278, 282-283 (D. Mass. 1987) (state law wrongful termination claim comparable to that provided by § 510 pre-empted by ERISA); *Miner v. International Typographical Union Negotiated Pension Plan*, 601 F. Supp. 1390, 1394 (D. Colo. 1985) (state law claims redundant of ERISA claims pre-empted); *King v. James River-Pepperell, Inc.*, 593 F. Supp. 1344, 1346 (D. Mass. 1984) (action "nearly identical" to those prohibited by ERISA pre-empted); *Kelly v. International Business Machines Corporation*, 573 F. Supp. 366, 371 (E.D. Pa. 1983), *aff'd without opinion*, 746 F.2d 1467 (3d Cir. 1984) (state claim addressing the "same type of wrong prohibited by" § 510 pre-empted); *Gordon v. Matthew Bender & Company, Inc.*, 562 F. Supp. 1286, 1294 (N.D. Ill. 1983) (ERISA § 510 already provides a remedy for employee discharged shortly before vesting date, thus claim pre-empted). To underscore the conflict, it is unlikely that McClendon would have succeeeded on the merits had he brought his claim under § 510 rather than state law. *See Corum v. Farm Credit Services*, 628 F. Supp. 707, 717 (D. Minn. 1986) ("Since plaintiff's pension rights were vested, he cannot maintain that defendant fired him in order to prevent plaintiff from obtaining vested pension rights.").

under ERISA addressing this type of claim. *Id.* at 588.[7] The Eighth Circuit reached a similar conclusion in *Dependahl v. Falstaff Brewing Corporation*, 653 F.2d 1208 (8th Cir. 1981), holding that common law claims of tortious interference with severance pay and life insurance plans are pre-empted by ERISA. *Id.* at 1216.

3. *The Decision Below Conflicts with This Court's Ruling in* Pilot Life *That State Claims within The Scope of ERISA Are Pre-empted*

In *Pilot Life Insurance Company v. Dedeaux*, 107 S. Ct. 1549 (1987), this Court considered whether ERISA pre-empted state comon law tort and contract claims regarding improper processing of benefit claims. *Id.* at 1550-51. The Court first examined the breadth of the ERISA pre-emption provision, noting that "We have observed in the past that the express pre-emption provisions of ERISA are deliberately expansive, and designed to 'establish pension plan regulation as exclusively a federal concern.'" *Id.* at 1552, quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981). Agreeing with the Solicitor General's argument that:

> Congress clearly expressed an intent that the civil enforcement provisions of ERISA § 502(a) be the exclusive vehicle for actions by ERISA-plan participants and beneficiaries asserting improper processing of a claim for benefits, and that varying state causes of action for claims within the scope of § 502(a) would pose an obstacle to the purposes and objectives of Congress

107 S. Ct. at 1555, the Court ruled that such claims are pre-empted by ERISA.

Like claims for improper processing of benefits, claims of discriminatory discharge for the purpose of inter-

---

[7] *See also Folz v. Marriott Corporation*, 594 F. Supp. 1007 (W.D. Mo. 1984) (state tort claim for discharge to eject plaintiff from self-funded medical benefits plans pre-empted by ERISA).

ference with pension benefits are specifically provided with a cause of action under ERISA, implemented by the civil enforcement scheme of § 502. 29 U.S.C. § 1140. As the Court observed in *Pilot Life*, "[t]he deliberate care with which ERISA's civil enforcement remedies were drafted and the balancing of policies embodied in its choice of remedies argue strongly for the conclusion that ERISA's civil enforcement remedies were intended to be exclusive." 107 S. Ct. at 1556-57. Thus, under the rationale of *Pilot Life*, state law claims which mirror ERISA § 510 are likewise pre-empted, and the decision below directly conflicts with that rationale.

B. The Decision Below Incorrectly Interprets ERISA, Which Broadly Pre-empts State Tort Actions

1. *The Statutory Language, The Legislative History, and This Court's Interpretations Mandate Pre-emption of State Tort Actions That Mirror § 510 of ERISA*

This Court has "virtually taken it for granted that state laws which are 'specifically designed to affect employee benefit plans' are pre-empted under § 514(a)." *Mackey v. Lanier Collections Agency & Service, Inc.*, 108 S. Ct. 2182, 2185 (1988). As the state common law developed by the court below is so designed, it is pre-empted by ERISA. The decision below, which holds to the contrary, mistakenly interprets the law.

As noted above, ERISA unequivocally pre-empts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan . . . ." 29 U.S.C. § 1144(a).[8] This Court has emphasized repeatedly the

[8] State judicial decisions as well as legislative pronouncements are pre-empted, since § 514 of ERISA defines "state law" to "include all laws, *decisions*, rules, regulations, or other State action having the effect of law, of any State." 29 U.S.C. § 1144(c)(1) (emphasis added). *See also Pilot Life Insurance Company v. Dedeaux*, 107 S. Ct. at 1553 n.1 (state decisional law included within definition of "state law" under § 514).

broad scope of ERISA's pre-emption provision, underscored by clear legislative history indicating Congressional intent to "establish pension plan regulation as exclusively a federal concern." *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. at 523 (1981).

This Court's decision in *Pilot Life* contains a thorough discussion of that legislative history. 107 S. Ct. at 1552. Congress rejected a pre-emption clause "applicable only to state laws relating to the specific subjects covered by ERISA . . . in favor of" the present broad language. *Id.*, quoting *Shaw v. Delta Air Lines, Inc.*, 463 U.S. at 98. Moreover:

> The House and Senate sponsors emphasized both the breadth and importance of the pre-emption provisions. Representative Dent described the "reservation to Federal authority the sole power to regulate the field of employee benefit plans" as ERISA's "crowning achievement." 120 Cong. Rec. 29197 (1974). Senator Williams said:
>
> "It should be stressed that with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to all actions of State or local governments, or any instrumentality thereof, which have the force or effect of law." *Id.* at 29933.
>
> See also *Shaw v. Delta Air Lines, Inc.*, *supra*, at 99-100, n.20, 103 S.Ct. at 2901, n.20 (describing remarks of Senator Javits).

107 S. Ct. at 1552. Thus, this Court already has recognized the strong legislative support for broad ERISA pre-emption of state laws.

Whether the state tort action here "relates to" a benefit plan, as required for pre-emption by § 514, is

also beyond dispute. This Court already recognized in *Pilot Life* its prior decisions in which "[t]he phrase 'relate to' was given its broad common-sense meaning, such that a state law 'relate[s] to' a benefit plan 'in the normal sense of the phrase, if it has a connection with or reference to such a plan.'" *Pilot Life*, 107 S. Ct. at 1553, quoting *Metropolitan Life Insurance Co. v. Massachusetts*, 471 U.S. 724, 739 (1985), quoting *Shaw v. Delta Air Lines*, 463 U.S. at 97.

A state law need not be designed specifically to affect employee benefit plans to be pre-empted. "ERISA makes clear that even indirect state action bearing on private pensions may encroach upon the area of exclusive federal concern . . . . ERISA's authors clearly meant to preclude the States from avoiding through form the substance of the preemption provision." *Alessi*, 451 U.S. at 525. Where, as here, the state common law creating a cause of action mirrors a specific section of ERISA creating a cause of action under the same facts, it can hardly be said that the state law does not "relate to" a benefit plan.

Indeed, when the succinct formula used by this Court in *Metropolitan Life Insurance Company v. Taylor*, 107 S. Ct. 1542 (1987), is applied, it is clear that the state law action under scrutiny here is pre-empted by ERISA. Like *Pilot Life*, *Taylor*, which was decided on the same day, involved common law claims for improper processing of a benefit claim.[9] This Court quickly established that such claims were pre-empted, as follows:

> Under our decision in *Pilot Life Ins. Co. v. Dedeaux*, Taylor's common law contract and tort claims are pre-empted by ERISA. This lawsuit "relate[s] to [an] employee benefit plan." It is based upon common law of general application that is not a law regulating insurance. Accordingly, the suit is pre-empted by § 514(a) and is not saved by § 514(b)(2)(A). Moreover, as a suit by a beneficiary to recover benefits from a covered plan, it falls directly under § 502(a)(1)(B) of ERISA, which provides an exclusive federal cause of action for resolution of such disputes.

[9] *Taylor* held that "complaints filed in state courts purporting to plead . . . state common law causes of action [for improper processing of benefits] are removable to federal court" because they are "displaced by ERISA's civil enforcement provision." 107 S. Ct. at 1544-45.

107 S. Ct. at 1546 (citations omitted). Like *Taylor*, this case relates to an employee benefit plan, is based on common law, and falls directly under an ERISA provision providing an exclusively federal cause of action. Thus, McClendon's state law claim, which mirors a claim under § 510 of ERISA, is pre-empted by § 514.[10]

2. *The Decision Below Incorrectly Distinguishes Suits for Damages, as Opposed to Suits for Benefits, as Being Exempt from ERISA Pre-emption*

The court below attempted to distinguish selected cases representing the wealth of authority supporting ERISA pre-emption by arguing that "here the plaintiff acknowledged in his brief to the court of appeals that he is *not* seeking lost *pension benefits* but is instead seeking future wages, mental anguish and punitive damages as a result of the wrongful discharge." Pet. App. 5a n.3 (emphasis in original). This distinction does not suffice.

[10] The few cases that have held to the contrary likewise incorrectly interpret the law. As Justice Gonzales aptly noted in his dissent below, "the [Texas Supreme] court's reliance upon two federal district court cases, *Hovey v. Lutheran Medical Center*, 516 F. Supp. 554 (E.D.N.Y. 1981) and *Savodnik v. Korvettes, Inc.*, 488 F. Supp. 822 (E.D.N.Y. 1980), is misplaced" because subsequent decisions of federal and state courts in New York have refused to follow them. Pet. App. 15a-16a. In *K Mart Corp. v. Ponsock*, 732 P.2d 1364 (Nev. 1987), where a jury award for compensatory and punitive damages for breach of an implied covenant of good faith and fair dealing based upon an employee's claim that he was terminated to avoid payment of pension benefits was upheld, the court did not address the issue of ERISA pre-emption.

There is no basis whatsoever for suggesting that ERISA pre-emption may be inapplicable due to the type of remedy sought. The statutory language pre-empts "any and all state laws" without any such restriction. 29 U.S.C. § 1144(a). Moreover, in determining that state tort claims for improper processing of benefits are pre-empted by ERISA, this Court specifically rejected the concept of separate state remedies for the same wrong, stating:

> The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA. . . The deliberate care with which ERISA's civil enforcement remedies were drafted and the balancing of policies embodied in its choice of remedies argue strongly for the conclusion that ERISA's civil enforcement remedies were intended to be exclusive.

Pilot Life, 107 S. Ct. at 1556-57.

The inapposite distinction articulated by the court below was specifically rejected by a federal district court in *Pratt v. Delta Air Lines*, 675 F. Supp. 991 (D. Md. 1987). There, as here, in a state law tort claim for discharge intended to interfere with retirement benefits, the argument was made that ERISA pre-emption was inapplicable because the suit was for damages, not merely benefits. Relying on *Pilot Life*, the court found the state tort claim pre-empted.

The court below attempted to evade ERISA pre-emption through artful characterization of the claim as one for damages rather than benefits. This subterfuge clearly seeks to "avoid[] through form the substance of the pre-emption provision." *Alessi*, 451 U.S. at 525. As this Court has already rejected the concept that additional state law remedies are available for ERISA-protected rights, Respondent's claim for additional remedies, used

by the court below to escape ERISA pre-emption, is clearly irrelevant.

II. THE DECISION BELOW, BY ALLOWING A STATE TORT SUIT IN A CLAIM GOVERNED BY ERISA, UNDERMINES THE CONSISTENT SYSTEM OF PENSION REGULATION ESTABLISHED BY CONGRESS IN ERISA AND SERIOUSLY BURDENS THE VAST NUMBER OF EMPLOYERS WHO MAINTAIN EMPLOYEE BENEFIT PLANS

A. The Decision Below Seriously Undermines The Uniform System of Pension Regulation Congress Intended To Establish with ERISA

As noted above, § 514 of ERISA was "meant to establish pension plan regulation as exclusively a federal concern." *Alessi*, 451 U.S. at 523. Explaining ERISA's broad pre-emption provision, Senator Javits stated that "the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required—but for certain exceptions—the displacement of State action in the field of private employee benefit programs." 120 Cong. Rec. 29942 (1974) (remarks of Senator Javits). Instead of a plethora of conflicting state laws, ERISA's sponsors anticipated that with broad pre-emption of state regulation, "a body of Federal substantive law will be developed by the court to deal with issues involving rights and obligations under private welfare and pension plans." *Id.* Accordingly, "[t]he pre-emption provision was intended to displace all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements." *Metropolitan Life Insurance Company v. Massachusetts*, 471 U.S. at 739.[11]

---

[11] *See also Mackey v. Lanier Collections Agency & Service, Inc.*, 108 S. Ct. at 2185 ("legislative 'good intentions' do not save a state law within the broad pre-emptive scope of § 514(a).").

The decision below, by allowing a state cause of action that is covering the same conduct as § 510 of ERISA, seriously undermines the uniform federal regulation of benefit plans that Congress intended to establish. It allows the state of Texas, and any other state which follows suit, to impose its own concept of appropriate regulation on the federal scheme.

As this Court has recognized:

> The expectations that a federal common law of rights and obligations under ERISA-regulated plans would develop, indeed, the entire comparison of ERISA's § 502(a) to § 301 of the LMRA, would make little sense if the remedies available to ERISA participants and beneficiaries under § 502(a) could be supplemented or supplanted by varying state laws.

Pilot Life, 107 S. Ct. at 1558. The decision below indeed frustrates the expectations of Congress.

B. The Decision Below, by Allowing a State Tort Action That Mirrors ERISA § 510, Seriously Burdens Employers Who Maintain Employee Benefit Plans

This Court has already recognized the serious problem that would be created by the imposition of varying state laws on employee benefit plans. Holding that ERISA pre-empted a state human rights law prohibiting practices permitted by federal law, the Court observed that:

> An employer with employees in many States might find that the most efficient way to provide benefits to those employees is through a single employee benefit plan. Obligating the employer to satisfy the varied and perhaps conflicting requirements of particular state fair employment laws, as well as the requirements of Title VII, would make administration of a uniform nationwide plan more difficult.

Shaw v. Delta Air Lines, Inc., 463 U.S. at 105 n.25. The Court conjectured that employers in this position would have to administer separate plans in each State, offsetting

the cost of the increased administrative burden by lowering benefit levels, or adapt the uniform plan by eliminating classes of benefits. *Id.* The Court concluded, "ERISA's comprehensive pre-emption of state law was meant to minimize this sort of interference with the administration of employee benefit plans." *Id.*

In enacting ERISA, Congress recognized the inherent difficulties in allowing state regulation of benefit plans, and thus adopted § 514 to "eliminat[e] the threat of conflicting or inconsistent State and local regulation of employee benefit plans." 120 Cong. Rec. 29933 (1974) (remarks of Senator Williams). As the Court agreed with the Solicitor General in *Pilot Life*, "varying state causes of action for claims within the scope of § 502(a) would pose an obstacle to the purposes and objectives of Congress." 107 S. Ct. at 1555.

These concerns are real. Of the 21.3 million full-time employees of medium-sized and large private firms in 1986, ninety percent participated in pension plans and had employer-sponsored health insurance. Employee Benefit Research Institute, Questions and Answers About Employee Benefits, EBRI Issue Brief No. 89 at 1 (April 1989). A substantial number of companies, including EEAC's members, are multistate employers, many of whom do business in all fifty states. Any erosion of ERISA's pre-emption provision will subject employee benefit plans to burdensome and costly state and local regulation, will severely hamper their efforts to maintain uniform and equitable benefits for their workforces, and will infringe on their ability to engage in free collective bargaining on benefits with unions representing their employees.

CONCLUSION

For the foregoing reasons, EEAC respectfully submits that the petition for a writ of certiorari should be granted.

Respectfully submitted,

ROBERT E. WILLIAMS
DOUGLAS S. MCDOWELL
ANN ELIZABETH REESMAN *
MCGUINESS & WILLIAMS
1015 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005
(202) 789-8600
Attorneys for Amicus Curiae Equal Employment Advisory Council

* Counsel of Record

March 15, 1990